



Comptroller General
of the United States

Washington, D.C. 20548

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Decision

REDACTED VERSION'

Matter of: Securigard, Inc.; Halifax Security Services, Inc.

File: B-248584; B-248584.2

Date: September 4, 1992

Robert M. Cambridge, Esq., for Securigard, Inc., and Leonard F. Raab, for Halifax Security Services, Inc. Richard M. Humes, Esq., George Conril Brown, Esq., and Daphne R. McFerren, Esq., Securities and Exchange Commission, for the agency. Richard P. Burkard, Esq., and John Brosnan, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protests that agency unreasonably downgraded protesters' proposals in the area of experience are denied where record shows that agency reasonably downgraded the protesters' proposals in that area because of the firms' performance under prior relevant contracts.

DECISION

Securigard, Inc. and Halifax Security Services, Inc. protest the award of a contract to Am-Pro Protective Agency, Inc. under request for proposals (RFP) No. SECHQ1-91-R-0018, issued by the Securities and Exchange Commission for security guard services. Each firm questions the agency's evaluation of its proposal in the area of experience and complains that award to Am-Pro at a higher price was not consistent with the RFP evaluation criteria.

We deny the protests.

'The decision issued on September 4, 1992, contained proprietary information and was subject to a General Accounting Office protective order. This version of the decision has been redacted. Deletions in text are indicated by "[deleted]."

BACKGROUND

The RFP was issued on July 24, 1991 and sought security guard services at SEC's headquarters and a nearby location for a base period and 4 option years. The RFP stated that award would be made to the offeror whose proposal was considered "the most advantageous" in accordance with the evaluation criteria. The RFP explained that proposals would be point scored for both technical merit and price; the technical proposal was worth 75 points and the price proposal, 25 points. To derive the price score, the RFP provided that the lowest priced proposal would receive the maximum 25 points and the remaining proposals would receive a relative percentage of 25 points based upon a formula contained in the RFP.

The RFP divided technical factors into the following three categories: (1) Experience and Past Performance; (2) Management Plan; and (3) Quality Control. Under Experience and Past Performance, the RFP requested that offerors list pertinent information concerning "all current and past contracts performed (federal or commercial) within the past five years to demonstrate that the offeror has successfully performed contracts for similar services." The RFP stated that "the Government will contact individuals and firms for which you have performed services to evaluate your experience and past performance record."

The agency received four proposals by the September 10 closing date. Each offeror was considered to be in the competitive range. The agency established a four-person technical evaluation panel (TEP) to evaluate the technical proposals. In addition to reviewing the written submissions of the offerors, the TEP was tasked with contacting the references provided by the offerors in their proposals.

The TEP initially contacted two of the references for Securigard; one highly recommended the firm, while the other reference, as discussed below in detail, noted strengths and weaknesses. Concerning the Halifax proposal, the TEP initially contacted two references; one characterized Halifax's performance as good, while the other was not pleased with the firm's performance. The TEP also initially contacted two of Am-Pro's references, and both recommended that firm highly.

Following discussions, the agency requested and received best and final offers from the firms. Halifax submitted the low offer at \$2,860,262. Securigard offered the next low price of \$2,920,586, while Am-Pro submitted the third-low price of \$3,428,478. The agency awarded price scores for these firms of 25, 24, and 21 points, respectively, based on these prices.

In the final evaluation of the technical proposals, the three proposals at issue here received virtually identical ratings, except under the factor of Experience and Past Performance. Excluding this factor, the scores, out of a possible 50 points, were as follows:

Halifax	49.75
Am-Pro	49.50
Securigard	49.50

With respect to the Experience and Past Performance factor, the contracting officer decided that the evaluators had not spoken to a sufficient number of the references to adequately evaluate the offerors. Consequently, the evaluators called additional references for each offeror.

The agency called seven additional Halifax references. Four of the seven were clearly dissatisfied with that firm's performance. As a result, the agency awarded Halifax 12.5 points out of the possible 25 for Experience and Past Performance. Based upon this, Halifax was given a technical point score of 62 and a total score including price of 87.

The agency contacted four additional references each for Securigard and Am-Pro. Each of the references were favorable; there were no negative comments made by any of the references regarding these two firms during these calls. Because all references were "uniform in their praise" of Am-Pro, the agency awarded the firm 25 points for Experience and Past Performance for a total technical score of 75. Am-Pro's overall point score was 96.

In arriving at a score for Securigard under this factor, the agency considered both the earlier calls made by the TEP as well as the later four calls. Based on the negative comments made by one of the first two references, the agency deducted 6.5 points from the possible 25, awarding it 18.5 points for Experience and Past Performance for a technical score of 68. Securigard's overall point score was thus 92. Since Am-Pro received the highest point score under the RFP formula, the agency awarded the firm the contract. These protests followed.

Both Halifax and Securigard question the agency's decision to make award to Am-Pro on the basis of its higher-priced proposal. The firms point out that based upon both price and technical considerations other than those relating to Experience and Past Performance, they were more advantageous under the RFP than the awardee. Both protesters contest the agency's evaluation of their proposals in the area of Experience and Past Performance.

SECURIGARD PROTEST

Securigard's protest focuses specifically on the one reference which caused the agency to downgrade its proposal. The response of this reference to the agency's inquiry is disputed by the parties and was the subject of a hearing at our Office. The agency states that during its initial evaluation of proposals, three of the TEP members placed a conference call to "[deleted]", the individual listed in Securigard's proposal as the point of contact for the firm's contract with "[deleted]" in order to inquire about the performance of Securigard. The agency maintains that "[deleted]" provided the TEP with negative comments concerning Securigard's performance. The protester, on the other hand, contends that "[deleted]" never received such a call and did not make the statements attributed to him regarding Securigard. Each of the parties has submitted affidavits from the individuals supporting its version. In addition, the agency has supplied typed notes which were based upon handwritten notes taken by one of the evaluators during the disputed conversation. The agency has also provided the handwritten notes taken by this evaluator.

At the hearing, one of the evaluators, Ms. Beverly Walker, testified that she placed the call to "[deleted]" at the number listed in the Securigard proposal and heard "[deleted]" identify himself as the point of contact for the contract. Video Transcript (VT) at 9:45. The other two evaluators, Ms. Michele Walker and Ms. Annette Kamara, stated that they heard Ms. Beverly Walker verify that she was speaking with "[deleted]". VT 10:44-45, 10:57, 11:28. Ms. Beverly Walker then placed "[deleted]" on the speaker phone to allow Ms. Michele Walker and Ms. Kamara to hear his comments. The evaluators testified that "[deleted]" informed them that Securigard's employees working at the "[deleted]" site were not always in the correct uniforms. VT 9:46-47, 9:50, 10:35, 11:01-02, and that Securigard had problems submitting timely and accurate paperwork under the contract. VT 9:46-47, 10:50, 10:58, 11:07-08. In addition, two of the evaluators stated that "[deleted]" expressed dissatisfaction with Securigard's performance and that "[deleted]" indicated that their contract would not be renewed. VT 9:48-50, 10:59-11:00, 11:02. Beverly and Michele Walker each testified that this conversation lasted approximately 15 minutes.¹ VT 10:02, 10:50. Moreover, each of the evaluators provided our Office with an affidavit describing the conversation and noting the weaknesses mentioned during the call. Each of the evaluators also

¹Annette Kamara noted that she did not remember the duration of the call but thought it was approximately 5-10 minutes.

noted weaknesses for Securigard's past performance in their score sheets which were prepared for each reference called.

Ms. Michele Walker testified that she took notes of the conversation with "[deleted]". VT 10:38, 10:41. These handwritten notes, which were later typed and served as the TEP summary of the conversation, stated that "[deleted]" rated Securigard's "overall performance" as "8 out of 10." The summary then listed specific comments, such as "supervisory control, excellent," "well staffed," and "responsive time is good in correcting deficiencies." The summary also included unfavorable comments such as, "paper work is not processed in a timely manner," "problems arose with agents not always wearing proper uniform," and "company would not be selected once contract is over."

Securigard, on the other hand, argues that "[deleted]" did not make these statements to the TEP members. The protester bases its position on the testimony of "[deleted]" at the hearing.² "[deleted]" stated that he did not recall speaking to the SEC evaluators. VT 10:06. He also stated that although he received approximately three calls per "quarter" or 12 calls per year from individuals seeking information concerning Securigard's performance under the guard contract at "[deleted]", he could not recall the name of any organization that called for a reference regarding the firm. VT 10:11.

Further, Securigard questioned "[deleted]" about what he would have said if he were asked the types of questions asked by the TEP. "[deleted]" testified that overall, he would have rated Securigard "outstanding" and "very professional." VT 10:06. He explained further that he did not recall any problems with Securigard's paperwork under the contract. VT 10:06. He also stated that he did not know of any problems with Securigard employees not being in proper uniform. VT 10:07.

The protester concludes that "[deleted]" inability to recall speaking to the evaluators and his favorable testimony concerning Securigard's performance demonstrate that the TEP's findings regarding the protester's performance under the contract in question were in error.

²"[deleted]" has also submitted an affidavit which is essentially the same as his testimony.

DISCUSSION

We find that (1) the conversation between the TEP members and "[deleted]" occurred, and (2) the remarks of "[deleted]" were accurately reflected by Ms. Michele Walker's notes of the conversation.

Our conclusion that the conversation occurred is based on the testimony of the TEP members. Each of the three agency evaluators clearly remembered speaking with "[deleted]". Ms. Beverly Walker recalled "[deleted]" identifying himself, while the other two evaluators recalled hearing her verify that she was speaking with "[deleted]". Each of the evaluators described the conversation consistently and credibly at the hearing.³ Moreover, the conversation was memorialized by the contemporaneous, handwritten notes taken by Ms. Michele Walker which reflect that "[deleted]" participated in the call. "[deleted]", on the other hand, merely stated that he did not recall the conversation. He also stated that while he did recall having conversations with individuals asking about Securigard's performance, he did not recall with whom any of those conversations were conducted. Under these circumstances, we find that the evidence supports the conclusion that, in fact, the SEC evaluators did have the conversation with "[deleted]" concerning Securigard.

We find also that, notwithstanding "[deleted]" uniformly favorable comments at the hearing regarding Securigard's performance, "[deleted]" comments are reflected in the testimony of the three evaluators and in the handwritten notes taken by Ms. Michele Walker at the time of the conversation. "[deleted]" testimony is essentially speculation about what he believes he would have said 9 months earlier if he had remembered the telephone conversation. We think this speculative testimony should be given less weight than the consistent and credible testimony of the three witnesses who remember the conversation and the handwritten, contemporaneous notes which summarize the remarks made by "[deleted]". Consequently, we find that the agency's evaluation record contains an accurate summary of

³The protester has not questioned the credibility of the evaluation panel members; rather, the protester speculates that the evaluators inadvertently called a reference cited by an offeror other than Securigard. We find this to be extremely unlikely. It is improbable that a 10 or 15 minute phone call placed for the sole purpose of discussing Securigard's performance at "[deleted]" could have occurred without the parties mentioning Securigard's name or the contract site.

the phone conversation with "[deleted]" concerning Securigard's performance.

Turning to the actual assignment of points to Securigard under this factor it is not the function of our Office to conduct its own evaluation of the proposals. Rather, we will examine an agency's evaluation to ensure that it was reasonable and consistent with the stated evaluation criteria since the relative merit of competing proposals is a matter which must be left to the judgment of the agency. See General Servs. Enq'g, Inc., B-245458, Jan. 9, 1992, 92-1 CPD ¶ 44.

Here, in light of our finding that the agency received unfavorable comments about Securigard's performance, we think there is support in the record for the TEP's decision to deduct points from Securigard under the evaluation factor Experience and Past Performance. Since the TEP had a basis for downgrading Securigard under this factor, we find that the agency's decision to award the contract to Am-Pro based on its higher point score was reasonable and consistent with the RFP's evaluation criteria. Consequently, we deny Securigard's protest.

HALIFAX PROTEST

Halifax argues first that, notwithstanding the RFP's emphasis on technical factors, it was unreasonable for the agency not to award the contract to it as the low-priced offeror since it currently is performing successfully under similar contracts at other government agencies. It points out, in this regard, that it has never failed to have a contract option exercised. Halifax also argues that in the past performance area the SEC evaluators unfairly focused on the negative comments by its references and that, in some cases, statements of the references were taken out of context.⁴

We disagree and for the reasons stated below find no bases upon which to question the evaluation of the Halifax proposal and the selection of Am-Pro.

⁴Halifax also asserts, without support, that the agency failed to contact the references listed by Halifax as the point of contact. The agency responds that the evaluators called the references as listed by the offeror. On occasion, the listed reference referred the evaluators to another individual familiar with Halifax's performance. We have no basis to question the agency's position in this regard and find the agency's actions to be reasonable.

In a negotiated procurement, unless the RFP so specifies, there is no requirement that award be based on lowest price. A procuring agency has the discretion to select a proposal with higher technical rating and a higher price if doing so is reasonable and is consistent with the evaluation scheme set forth in the RFP. Management Sys. Designers, Inc., B-244383.3, Sept. 30, 1991, 91-2 CPD 310.

Here, the RFP clearly stated that both technical proposals and price would be point scored with technical worth 75 points and price worth only 25 points. Thus, offerors knew or should have known that the award decision would depend largely on the evaluation of technical proposals and that price would be significantly less important. The record shows that the agency simply followed the point formula in making the award decision. We therefore have no basis to object to the award of the contract to an offeror who submitted a higher-priced and higher-rated proposal than the protester's. Management Sys. Designers, Inc., supra.

Concerning the actual evaluation of Halifax's proposal under the Experience and Past Performance, the protester simply has not shown the agency's evaluation, which was based on contacts with the references provided by Halifax itself, to be unreasonable. The protester merely points out facts which were either known and considered by the agency evaluators (some of the references contacted were satisfied with Halifax's performance) or were not at issue in the evaluation (renewal of options under other contracts). The record shows that several of the references called by the agency were not satisfied with Halifax's performance. On that basis, it was, in our view, reasonable for the evaluators to downgrade Halifax's proposal in the area of Experience and Past Performance.

With respect to Halifax's assertion that the agency treated that firm unfairly and took comments out of context in order to downgrade its proposal, there is simply no support in the record for such a conclusion. To the extent that Halifax argues that the evaluation was biased in favor of Am-Pro, the record must show that the agency had a specific intent to injure a protester. Miller Bldg. Corp., B-245488, Jan. 3, 1992, 92-1 CPD ¶ 21. Here, there is no evidence to substantiate such a claim. Consequently, we deny Halifax's protest.

OVERALL CONCLUSION

Based on our examination of the record, we can find no legal basis upon which to object to SEC's selection of Am-Pro, and we deny both the protests of Securigard and that of Halifax.

James F. Hinchman
General Counsel